

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	

**PUERTO RICO TELEPHONE COMPANY, INC.  
COMMENTS UPDATING PETITION FOR RECONSIDERATION OF  
FIRST REPORT AND ORDER**

Puerto Rico Telephone Company, Inc. (“PRTC”), by its attorneys, hereby updates its Petition for Reconsideration of the First Report and Order in CC Docket No. 96-45, Federal-State Joint Board on Universal Service.<sup>1</sup> PRTC continues to seek reconsideration of the failure to establish sufficient universal service for insular areas, contrary to Section 254(b)(3) of the Communications Act.

**I. BACKGROUND**

Section 254(b)(3) of the Communications Act establishes the universal service principle that consumers in “rural, insular, and high cost areas” have access to telecommunications services “that are reasonably comparable” in quality and rates to similar service provided in urban areas. Though the Commission adopted in its USF First Report and Order universal service programs for consumers in high cost areas and separately for those in rural areas, the

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<sup>1</sup> See Public Notice, “Parties Asked to Refresh the Record Regarding Reconsideration of Rules Adopted in the 1997 Universal Service First Report and Order,” CC Docket No. 96-45, DA 01-1647 (Com. Car. Bur. rel. July 11, 2001); 66 Fed. Reg. 37963 (July 20, 2001).

Commission declined to make any provision for universal service to insular areas.<sup>2</sup> Instead, the Commission has effectively read Congress' direction regarding insular areas out of the Act. On July 17, 1997, PRTC sought reconsideration of the USF First Report and Order, because the Commission failed to design or adopt a universal service mechanism that meets the needs of insular areas, as expressly required by Section 254(b)(3) of the Act.

This issue has not been resolved in the intervening years. Indeed, as the federal universal service high cost program for “non-rural” carriers has taken shape through the adoption of a methodology in the USF Ninth Report and Order<sup>3</sup> and the related adoption of a model platform in the USF Fifth Report and Order<sup>4</sup> and model inputs in the USF Tenth Report and Order,<sup>5</sup> it is plain that this methodology fails to produce sufficient universal service support for Puerto Rico. Indeed, absent the Commission's hold harmless policy, whereby universal service support under the prior methodology is being phased down by one dollar per line per study area per month on an annual basis, Puerto Rico would receive no high cost support under the policies adopted in the USF First Report and Order. Though other insular areas may be somewhat protected by the failure to establish sufficient support for insular areas because carriers serving these areas may also satisfy the definition of a rural carrier, this is not the case for Puerto Rico. Instead, all high

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<sup>2</sup> Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 (1997) (“USF First Report and Order”) (subsequent history omitted).

<sup>3</sup> See Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (“USF Ninth Report and Order”).

<sup>4</sup> See Federal-State Joint Board on Universal Service, Fifth Report and Order, 13 FCC Rcd 21323 (1998).

<sup>5</sup> See Federal-State Joint Board on Universal Service, Tenth Report and Order, 14 FCC Rcd 20156 (1999), aff'd Qwest Corporation v. FCC, No. 99-9546, No. 99-9547, No. 00-9505, 2001 U.S. App. LEXIS 17044 (10<sup>th</sup> Cir, July 31, 2001) (“Qwest v. FCC”).

cost universal service support for Puerto Rico is at risk — and slated for complete elimination. This result is contrary to the plain language of the Act and to the fundamental universal service purpose of making basic telephone service affordable for all consumers, including those in insular areas.

**II. SECTION 254(b)(3) REQUIRES THAT UNIVERSAL SERVICE BE MADE AVAILABLE SPECIFICALLY TO INSULAR AREAS**

As PRTC demonstrated in its pending Petition for Reconsideration, Congress appropriately recognized insular areas have unique universal service needs. Section 254(b)(3) provides that:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>6</sup>

According to this principle, the Joint Board and the Commission were to create a universal service system such that consumers in insular areas, and in rural areas, and in high cost areas receive affordable service at rates comparable to consumers in urban areas. In this regard, the Commission has determined with respect to rural carriers that “reform will be undertaken only after the Commission, the Joint Board, and a Rural Task Force appointed by the Joint Board have

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<sup>6</sup> 47 U.S.C. § 254(b)(3) (emphasis added).

selected an appropriate methodology for rural support.”<sup>7</sup> The same approach should be applied to PRTC, a carrier serving an insular area.<sup>8</sup>

Puerto Rico is plainly included within the term “insular.” The term itself means “of, or having the form of an island.”<sup>9</sup> Though the term “insular” is not defined in the Communications Act, other laws using the same term, such as the Low-Income Home Energy Assistance Act, include the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands among “insular” areas covered by the provision.<sup>10</sup> Indeed, in the Further Notice on Subscribership, the Commission proposed that “insular areas” be defined as “islands that are territories or commonwealths of the United States” for purposes of universal service support,<sup>11</sup> which plainly includes Puerto Rico.

This specification by Congress of insular areas along with high cost and rural areas is reasonable and understandable. Insular areas almost uniformly lag well behind the national average telephone penetration rate, such that universal service should be targeted to these areas consistent with the statutory requirements and as a practical matter. As the Commission stated,

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<sup>7</sup> Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20439 (1999), reversed and remanded in part Qwest Corporation v. FCC, No. 99-9546, No. 99-9547, No. 00-9505, 2001 U.S. App. LEXIS 17044 (10<sup>th</sup> Cir, July 31, 2001) (“Qwest v. FCC”).

<sup>8</sup> 47 U.S.C. § 254(b)(3); see also PRTC Petition for Reconsideration, CC Docket No. 96-45 (filed July 17, 1997); Proposal of Puerto Rico Telephone Company, CC Docket Nos. 96-45 and 97-160 (DA 98-715) (filed April 27, 1998).

<sup>9</sup> See Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21233 (1999) (“Further Notice on Subscribership”).

<sup>10</sup> See 42 U.S.C. § 8623. See also 48 U.S.C. §§ 1469a-1, 1492, and 1494b.

<sup>11</sup> Further Notice on Subscribership, 14 FCC Rcd at 21233.

“insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”<sup>12</sup> This is plainly the case in Puerto Rico, where the current telephone subscribership rate is approximately 74.5 percent<sup>13</sup> and the poverty rate is approximately 55 percent. Under these circumstances, it is necessary to ensure that universal service support is not arbitrarily jeopardized.

Indeed, when faced with this same issue for rural areas, the Commission determined that it would establish a separate universal service program because it could not ensure that rural carriers “would receive appropriate levels of support if [it] allowed them to receive support calculated using the forward-looking economic cost mechanisms for nonrural carriers.”<sup>14</sup> Consistent with this earlier conclusion, the Commission only recently adopted the universal service plan for rural carriers proposed by the Rural Task Force.<sup>15</sup> The same approach should now be extended to carriers serving insular areas.

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<sup>12</sup> USF First Report and Order, 12 FCC Rcd at 8839.

<sup>13</sup> See Comments of the Telecommunications Regulatory Board of Puerto Rico, CC Docket No. 96-45 (filed Jan. 29, 2001) at 2 (reporting islandwide subscribership rate based on “an extensive filed study of universal service requirements in Puerto Rico”).

<sup>14</sup> Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5364 (1997) (“USF Fourth Order on Reconsideration”).

<sup>15</sup> See Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and interexchange Carriers, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) (“Rural Task Force Order”).

It is now evident that the model produces bizarre results for Puerto Rico, a traditionally high cost area with low penetration.<sup>16</sup> The model methodology, however, apparently fails to capture accurately the high cost to serve Puerto Rico. The model output (coupled with the implementation methodology) arbitrarily “rebalances” universal service support with no record support other than the model output itself. This rebalancing of support from Puerto Rico, with an objectively low telephone penetration rate, to states with telephone penetration rates near the national average is entirely inconsistent with the statutory expectation that support would be available so that consumers in insular areas would have “access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” It is impossible to classify the rates in Puerto Rico as reasonably comparable when 20 percent less of the population subscribes to the service. Where a telephone penetration rate in an insular area is more than 20 percent less than that of an urban area — as is the case in Puerto Rico — and universal support is reduced or eliminated, the statutory requirement plainly has not been met.

### **III. THE ANTICIPATED TOTAL LOSS OF HIGH COST SUPPORT IN PUERTO RICO DEMONSTRATES THAT CARRIERS SERVING INSULAR AREAS MUST RECEIVE UNIVERSAL SERVICE SUPPORT UNDER THE SAME MECHANISM AS RURAL CARRIERS**

In 1997 when petitions for reconsideration of the USF First Report and Order were filed, the methodology and mechanism by which universal service would be determined had not been established. Though PRTC accurately identified that a model methodology applied to an insular

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<sup>16</sup> Indeed, Puerto Rico’s low penetration rate itself demonstrates that continued — if not increased — universal service support is necessary to address the combination of high costs and low income that work together to suppress subscribership.

area like Puerto Rico would not be accurately predicted by a model methodology, that outcome has since been confirmed. Although the Commission provided for the special concerns of rural carriers serving both rural and insular areas by delaying the transition to a new methodology for these carriers, it failed to recognize that similar caution is appropriate for non-rural carriers serving insular areas. Moving to a methodology that imposes significant reductions in universal service support is contrary to the stated purposes of the federal universal service program.

The permanent loss of over \$ 50 million in universal service support, based on 2000 high cost support, could not be the result intended by Congress under the new universal service program.<sup>17</sup> Under the model methodology and with no provision made for carriers serving insular areas, Puerto Rico will receive no high cost support. This incongruous result can be rectified by categorizing PRTC appropriately with “rural” carriers, rather than with “non-rural” carriers. Thus, there will be no transition to a proxy model methodology unless and until the Commission, Joint Board, and Rural Task Force have determined that such a transition is appropriate. Adoption of this approach is necessary to ensure that sufficient support is available to all consumers, particularly in insular areas.

Under no circumstance, however, is universal service support for Puerto Rico “sufficient” for that insular area. Focusing solely on the “high cost” portion of universal service support provided to Puerto Rico, over \$15.1 million in support has already been eliminated, with an additional amount of the same magnitude slated for elimination at the beginning of next year. With a current islandwide subscribership rate below 75 percent, Puerto Rico will lose the

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<sup>17</sup> Under the hold harmless phase down, Puerto Rico has already lost significant support. In the first year, Puerto Rico loses \$15.1 million in support, \$31.9 million cumulative in the second year, and \$34.1 million cumulative in the third year. PRTC expects this loss to have a  
(continued...)

majority of its high cost support for intrastate costs within the next two years. These losses are not readily transferred to customers in the form of rate increases. The low penetration rate coupled with the low income level in Puerto Rico would exacerbate the impact of any rate increase on the island and would be expected to damage universal service efforts. Certainly no one can reasonably expect a loss in universal service support to produce a surge in the Puerto Rico subscribership rate.

Against this background, the U.S. Court of Appeals for the Tenth Circuit recently remanded the USF Ninth Report and Order to the Commission with instructions to, among other things, define what it means for federal universal service support to be “sufficient” under Section 254(b)(5) of the Act.<sup>18</sup> According to the court, the Commission “simply asserted without explanation that the mechanism it chose would be sufficient,” which assertion was “inadequate to enable appellate review of the sufficiency of the federal mechanism.”<sup>19</sup> In the case of Puerto Rico, the loss of over \$50 million in federal high cost support under the devised methodology is unparalleled, such that it is inconceivable that such an outcome could be reconciled with any definition of “sufficient” developed on remand. This definitional difficulty may be resolved by awarding federal high cost support for carriers serving insular areas in the same manner as for rural carriers, consistent with Section 254(b)(3) of the Act.

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direct impact on universal service efforts and continues to seek reconsideration of this decision on that basis.

<sup>18</sup> Qwest v. FCC, 2001 U.S. App. LEXIS 17044 at \* 23.

<sup>19</sup> Id.



**IV. CARRIERS SERVING INSULAR AREAS ARE APPROPRIATELY TREATED THE SAME AS RURAL CARRIERS FOR UNIVERSAL SERVICE PURPOSES**

Finally, PRTC shares similar characteristics with rural carriers that, as a carrier serving an insular area, support its inclusion with that group. First, like many rural carriers and unlike many non-rural carriers, PRTC receives long term support from the NECA Common Line pool. In this respect, its participation in the pool alongside many rural carriers links PRTC's universal service status with rural carriers. Second, PRTC serves the entire island of Puerto Rico, including those rural areas that, in other states, typically would be served by rural carriers. Although other non-rural carriers may be eligible to make similar claims of serving typically "rural" areas, none can say that they serve such areas exclusively, nor that their loss of universal service support would eliminate support for the state entirely.

Puerto Rico is essentially penalized based on happenstance. Because a single "non-rural" carrier provides service on an islandwide basis, every dollar of universal service support is at risk under the new methodology. In contrast, all but three other jurisdictions presently receive rural support so that some amount is protected from the model methodology. And of the three other jurisdictions that do not receive any rural carrier support, they do not receive any support at all.<sup>20</sup> At bottom, the inability of the model to satisfy Puerto Rico's USF needs, the insular status of Puerto Rico, and the total absence of any other so-called "rural carrier" in Puerto Rico requires that PRTC's transition to the model methodology be delayed on the same basis as applied to rural carriers.

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<sup>20</sup> The three other jurisdictions are the District of Columbia, Delaware, and Rhode Island. Public Notice, CC Docket Nos. 96-45 and 97-160, "Common Carrier Bureau Releases State-by-State Universal Service High-Cost Support Amounts for Non-Rural Carriers and Forward-Looking Cost Model Results," DA 99-2399 (rel. Nov. 2, 1999).

## V. CONCLUSION

By failing to develop any universal service program to meet the needs of insular areas while doing so for high cost and rural areas, the Commission has inconsistently applied the plain language of Section 254 of the Act. Moreover, when the non-rural methodology is applied to Puerto Rico — an insular area not served by any rural carrier — all high cost support is eliminated, such that support could not be deemed sufficient under any definition of that term.

For these reasons and for the reasons set forth in its July 17, 1997 Petition for Reconsideration, PRTC respectfully requests that the Commission grant PRTC's Petition for Reconsideration of the USF First Report and Order and treat carriers serving insular areas in the same manner as rural carriers for the purpose of calculating and distributing high cost universal service support.

Respectfully submitted,

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Dated: August 20, 2001

## **CERTIFICATE OF SERVICE**

I, Colleen A. Mulholland, certify that a copy of the foregoing Comments of Puerto Rico Telephone Company, Inc. was mailed by first-class mail, postage pre-paid, on this 20<sup>th</sup> day of August, 2001 to each of the following individuals or entities:

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